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JAN 2 9 1997

Federal Communications Commission
Office of Secretary

January 29, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554

Re: CC Docket Nos.: 96-262; 94-1; 91-213; and 96-263

Dear Mr. Caton:

Pursuant to the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry in the above captioned matter, enclosed please find an original and sixteen copies of the Comments of the Bankers Clearinghouse, Mastercard International, Incorporated, and Visa, U.S.A., Inc. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Laura McDonald

Laura F. H. McDonald

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JAN 29 1997

Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

COMMENTS OF THE BANKERS CLEARING HOUSE, MASTERCARD INTERNATIONAL INCORPORATED, AND VISA, U.S.A, INC.

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Dated: January 29, 1997

SUMMARY

The Commission questions whether separate flat-rated call-setup charges and usage sensitive/per query Signaling System 7 charges should be created. The Bankers Clearing House, VISA, U.S.A., Inc., and MasterCard International Incorporated (collectively the "Financial Service Providers") submit that neither is justified at this time.

The Commission should not make dramatic changes in the manner in which call-setup and SS7 charges are recovered without careful examination of the costs at issue, the mechanisms needed to track and recover them, and the impact of changes on customers and businesses built upon high volumes of short duration calls. If, after such an investigation, the LECs demonstrate that the efficiency gains of charging for call-setup and SS7 are real and are not outweighed by the costs of separately tracking and billing those costs, the Commission should require that any associated charges be phased-in over three years. That will allow those most affected to avoid rate-shock and to allow heavily affected end-users to migrate off of the public switched network.

Rate-shock is a real possibility for organizations like the Financial Service Providers that have built businesses such as credit card authorization around the placement of *millions* of very short calls a day. The charges considered by the Commission could easily add 25 to 100% to the telecommunications costs of these businesses.

Finally, the Commission should refrain from making major changes now if charges based on embedded costs will be restructured in the near future so that they are recovered instead on the basis of forward looking cost models.

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COMMENTS OF THE BANKERS CLEARINGHOUSE, MASTERCARD INTERNATIONAL INCORPORATED, AND VISA, U.S.A., INC.

The Bankers Clearing House, VISA, U.S.A., Inc., and MasterCard International Incorporated (collectively the "Financial Service Providers") submit the following comments in the above-captioned rulemaking.[1] The Financial Service Providers concur in the need for comprehensive reform of the access charge regime to meet the goals of the Telecommunications Act of 1996 (the "1996 Act").[2] These Comments focus on questions raised in Section III of the

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[1] *Access Charge Reform*, *Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing,* Notice of Proposed Rulemaking, CC Docket Nos. 96-262, 94-1, 91-213 (rel. Dec. 24, 1996) ("*NPRM*").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151*et seq.* (The "1996 Act").

Rulemaking concerning "Rate Structure Modifications." In particular, the Comments address proposals and questions regarding call set-up charges and SS7 signaling rate elements.

BACKGROUND

The Bankers Clearing House ("BCH") is an association of financial institutions whose members include the Bank of America, City National Bank, Sanwa Bank of California, Union Bank of California, and Wells Fargo Bank. BCH serves primarily as a clearing house through which members settle accounts and present checks and other payment instruments. It also represents member institutions in regulatory matters on issues of common concern.

MasterCard International Incorporated ("MasterCard") is a Delaware membership corporation not-for-profit corporation whose service marks are used by approximately 29,000 member banks in approximately 170 countries and territories to provide payment systems and automated teller machine services.

VISA, U.S.A., Inc.'s ("Visa") approximately 19,000 member financial institutions similarly use its service marks in connection with payment systems (including debit and credit cards), check authorizations, automated teller machines and related services.

Collectively, the Financial Service Providers members spend in excess of $200 million per year on telecommunications services. As large telecommunications users, the Financial Services Providers have a direct interest in Commission actions that ensure economically efficient pricing by local exchange and interexchange carriers.

I. THIS IS NOT A GOOD TIME TO IMPLEMENT NEW CALL-SETUP CHARGES

The NPRM explores permitting (or requiring) Local Exchange Carriers ("LECs") to impose "call-setup" charges to recover the costs of the "process of establishing a transmission path over which a phone call will be routed."[3] LECs currently recover the costs associated with call-setup through per-minute local switching charges or the Transport Interconnection Charge ("TIC"). Working from the assumption that call-setup charges do not vary based on the length of a call, the Commission questions whether longer-duration calls recover a disproportionate portion of call-setup costs. The NPRM requests comment on whether, and if so how, to impose call-setup charges.[4]

Before imposing or permitting new flat-rated charges for call-setup, the Commission should: (1) determine the actual costs not only of call-setup but of setting up a system to track and bill call-setup expenses and of billing such expenses on an ongoing basis; (2) determine the relationship between the costs of tracking and billing separately for call-setup (and the substantial costs that setup charges would impose on businesses built on the placement of large numbers of short calls) and the costs of call setup itself; and (3) consider the impact of proposals to revamp access charges in the near future to move from

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3 NPRM at ¶75.

4 *Id.* at 76.

recovering costs on an embedded basis to recovering such costs on the basis of TELRIC or another forward-looking methodology.

If the Commission determines after investigation that separate, flat-rated call-setup charges are justified (*i.e.*, that the efficiency benefits of such charges outweigh their transaction and related costs), such charges should be phased in over at least three years to avoid rate shock and allow severely affected users to migrate their traffic off of the public switched network in an orderly manner.

A. The FCC Should Not Impose or Allow Call-Setup Charges Without Investigating Whether Such Charges are Necessary and Economically Efficient.

1. To Avoid Double Counting, The FCC Must Not Impose Call-Setup Charges Without Determining if Call-Setup Costs are Recovered Elsewhere.

In order to avoid overrecovery of applicable costs, the Commission must harmonize any charges imposed on call-setup with charges associated with other network functions. Call-setup is typically accomplished either through Signaling System 7 ("SS7") or multifrequency ("MF").[5] The LECs are in the process of completing a migration from MF call-setup to a system based on the use of SS7,[6] and the Commission has proposed new rate elements to recover

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5 MF is an in-band signaling method in which the signaling function occupies the same lines and circuits as those that carry voice. SS7 is a form of out-of-band signaling (also referred to as Common Channel Interoffice Signaling ("CCIS")) that uses a network that is totally separate from the voice network.

6 The LECs covered by this Rulemaking have all been ordered to institute SS7 for 800 Services. *See, e.g., Pacific Bell Petition for Waiver of 800 Data Base Access Time Requirements, BellSouth Petition for Waiver of 800 Data Base Access Time Requirements,* CC Docket No.

SS7 signaling costs.[7] If the Commission adopts the pending SS7 proposals, residual call-setup costs will be substantially reduced, and may well be *de minimus*. It is imperative that the Commission determine how carriers will recover their SS7 signaling costs, and how much (if any) of the carriers' call-setup costs will remain unrecovered after SS7 charges are put in place before it imposes a separate call-setup charge.

2. Separate Call-Setup Charges Should Not Be Imposed Without Weighing the Costs of Call-Setup Against the Costs of Collection.

There are two prerequisites to the economic and efficient allocation of costs. The first is identification of the costs and cost causers; the second is analysis of whether it is economically efficient to recover certain costs separately. The Commission should examine both before implementing a separate, flat-rated call-setup charge.

First, the Commission should compare the costs associated with call-setup and the costs associated with creating, implementing and maintaining the systems needed to separately account and bill for call-setup. In an investigation of these costs, the LECs can justify their numbers and others will have ample opportunity to scrutinize them.[8]

86-10, Memorandum Opinion and Order, 11 FCC Record 4436 (rel. Feb. 28, 1995).

7 The Commission has separately addressed SS7 and so will the Financial Service Providers.

8 It would illogical to wait until the tariffing process to determine these costs. Cost information is essential to determine how to assess charges, to ensure that there is no double

Second, the Commission must determine whether the benefit of recovering call-setup costs separately outweighs the effort and expense of implementing the tracking and billing system needed to recover the costs at issue. In a digital world in which switch capacity decisions are driven by busy-hour lead factors rather than the number of calls or call attempts, the discrete costs of call-setup are likely to be small. If the price of setting up a mechanism to track and bill a cost exceeds the cost it is intended to recover, the cost cannot efficiently be allocated through a separate charge.[9] If a separate call-setup charge is imposed when it is not economically efficient to do so, the Commission will inadvertently encourage uneconomic bypass of the public switched network.

LECs will have every incentive to gild the billing lily if the costs of billing and tracking them are both recoverable and large relative to call-setup costs themselves. The result is that users would be hit three times -- first to pay the costs of developing and implementing the tracking/billing process, second to pay for the ongoing costs of monitoring and billing, and third to pay the actual cost of call-setup.

The LECs' track record in product design and implementation magnifies the Financial Service Providers concerns. Telephone billing is notoriously inaccurate, and the LECs inevitably quote breathtaking prices (and long times) when asked to develop new kinds of billing or billing features. As a general matter, utility pricing – which is premised on enormous additions to direct

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counting and to determine whether the charges are economically efficient. Waiting for the tariffing process to make that determination is putting the boat in the water before checking for leaks.

cost -- frequently yields ridiculous prices. One recent (and notorious example) concerns the $50,000-60,000 price quoted by a LEC for a 10 x 10 chain link collocation cage inside a remote and small central office - a price that turned out to be based on inefficient direct engineering estimates to which excessive supervision (and arguably other costs) were added.[10] If similar methodologies are employed to bill for call setup, the final cost will be a bill that is several times actual setup cost.

3. The Commission Should Not Impose Call-Setup Charges Today If It Contemplates Major Changes in Access Charges Tomorrow.

It would be wholly illogical to adopt a new rate structure designed to ensure that the LECs recover the embedded costs of call setup, only to turn around and later mandate cost recovery based on forward looking economic costs. The resulting inaccurate signals to the market would be disruptive to high-volume users of telecommunications services, particularly those (like the Financial Service Providers) that have built businesses such as credit card authorization on the placement of millions of very short calls. If this is not avoided, businesses will alter their use of the public switched network (at considerable expense) in response to newly imposed costs, only to face a near term change that negates their actions. Arbitrariness aside, such a result could

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10 Case No. 94-C-0577, *Petition of ACC Syracuse Telecom. Corp. for the Creation of an ONA Task Force to Address Technical and Economic Issues Relating to ACC's Request for Collocation and Related Services from NYT*, Order Resolving ONA Task Force Issues (Dec. 28, 1994) ("Order").

severely damage companies that have entered into long term contracts with carriers based on existing pricing structures.

B. If A Separate Call-Setup Charge Is Justified, It Should Be Phased In To Avoid the Crippling Impact of Rate Shock.

If, after review of the costs of call-setup and the costs of implementing and maintaining call setup billing, the Commission concludes that call-setup charges are justified (and we doubt that they will be), the Commission should phase-in any new charges to avoid crippling impacts on key business sectors. Depending upon the levels chosen, imposition of a call setup charge would likely increase the costs of telephone service associated with applications like credit card authorization by 25-100%. Without a transition, businesses that have designed their systems around the current regime will face major economic difficulties due to a sudden change in how access charges are assessed.

A reasonable (*e.g.*, 36 month) transition period would allow those businesses to reevaluate their plans and, if appropriate, move to alternate technologies. It would also allow businesses that have entered into long term contracts based on the existing regime to work through those agreements.[11]

The advantages to phasing in rates to avoid rate shock have been affirmed by the courts and acknowledged by the Commission. The D.C. Circuit

[11] Most large user contracts are for three to five year terms. The ability of a user to move its traffic prior to the expiration of such a contract without incurring substantial penalties turns on a number of issues, *e.g.*, whether the imposition of call-setup charges on businesses built upon calls of very short duration is deemed a *force majeure* condition.

has noted that "[t]he shift from one type of nondiscriminatory rate structure to another may certainly be accomplished gradually to permit the affected carriers, subscribers and state regulators to adjust to the new pricing system, thus preserving the efficient operation of the interstate telephone network in the interim."[12]

For its part, the Commission has recognized the need for a phase-in of rate increases to avoid service disruptions and other adverse effects. Most importantly, when rejecting prior requests to impose charges for call-setup, the Commission cited the potential for rate shock and expressed concern that "an abrupt change . . . could undermine access customers' business plans which were based on a reasonable expectation of stability in the access rate structure."[13] The Commission has acted on similar concerns in other instances. For example, in detariffing customer premises equipment ("CPE"), the Commission instituted a 24-month price predictability period for multi-line business equipment that had previously been leased from AT&T.[14] When it

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12 *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1135-36 (D.C. Circuit 1984), *cert. den.* 469 U.S. 1227 (1985)(affirming the Commission's decision to implement a transitional rate structure to recover some of the interstate share of local exchange costs through a usage sensitive charge assessed on interexchange carriers.) *See also Western Union Telegraph Company v. FCC*, 815 F.2d 1495, 1505 (D.C. Circuit 1987)(upholding the Commission's authority, in changing from settlement agreement rates to cost-based special access rates, to implement final rates for special access facilities in transition periods to mitigate the harm of rate shock).

13 *Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules To Permit a Call Setup Charge*, Memorandum Opinion and Order, 4 FCC Record 7210 (1989) ("*Bell Atlantic Order*") at 7211, ¶15.

14 *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, CC Docket No. 81-893, Second Report and Order, 98 FCC 2d 814, (1984); *aff'd. Procedures for Implementing the Detariffing of Customer Premises Equipment and*

replaced settlement agreement access charge rates with a single, cost-based rate structure, concern that a sudden rate shift would seriously compromise the ability of competitive interexchange carriers to provide services to many customers led the Commission to adopt a plan that gradually equalized settlement and special access rates.[15] More recently, the Commission decided to allow a transition period for small, rural carriers affected by changes in universal support mechanisms "to minimize any possible rate shock to [rural carrier] customers."[16]

The debilitating impact of large, sudden rate increases counsels against a "flash cut" approach to call-setup charges and in favor of a phased-in approach. In contrast, the only argument in favor of a flash-cut approach – that the revenues foregone during the phase-in period can not otherwise be recovered – is meritless. If setup charges are to be revenue-neutral, and assuming that transaction costs are modest (admittedly a very large assumption), phase in without revenue loss can be accomplished simply by staging reductions in per minute costs to offset increases in setup charges.

Enhanced Services, CC Docket No. 81-893, Memorandum Opinion and Order, 100 FCC 2d 1290 (1985).

15 *In the Matter of Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Report and Order, 102 FCC 2d 1007 (1985).

16 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (November 8, 1996) at ¶356.

II. CHANGES TO CURRENT SS7 COST RECOVERY CHARGES SHOULD BE MADE CAUTIOUSLY AND ONLY AFTER PROPER EXAMINATION OF THE RISKS OF IMPLEMENTING USAGE SENSITIVE CHANGES

The Commission questions whether it should institute a new rate structure for SS7 signaling consisting of the following rate elements:

(1) Signal Link -- continued recovery of dedicated network access lines (DNAL) costs on a flat-rated basis;[17]

(2) STP Port Termination – continued recovery of the cost of the signal transfer point (STP) port that connects with a customer's DNAL through a flat-rated charge. The new charge would be similar to today's interim rate element, but would exclude the cost of STP screening and switching functions, which are not performed at the port;[18]

(3) Signal Transport – a new usage-sensitive charge to recover the cost of circuits that carry SS7 queries between STPs, switches, and service control points ("SCPs") within ILEC signaling networks;[19] and

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17 NPRM at ¶ 128. The Financial Service Providers support the Commission's proposal to keep the DNAL rate element in the transport service category within the trunking basket, as long as the Commission places the new STP port termination element in a different service category, as explained in note 19, *infra*. *Id.*

18 NPRM at ¶ 129. The Commission also has proposed placing this rate element in a new service category in the traffic-sensitive basket, *i.e.*, in a different category than the signaling link. NPRM at ¶ 130. The Commission's rationale, which the Financial Service Providers endorse, is that the two rate elements must be in separate service categories to prevent the LECs from subsidizing the cost of the more competitive signaling link element (which can be provided by interconnectors) with revenues from the monopoly STP port (which only the LECs can provide). *Id.*

19 NPRM at ¶ 131. The NPRM observes that the costs of signal transport appear to be related most closely to the number of queries, and therefore asks whether the charge should be imposed on a per-query basis. It also asks whether the Commission should allow the price cap LECs to impose distance-sensitive charges for signal transport. *Id.* The Financial Services Providers agree with the Commission's assessment that signal transport is a form of transport and therefore should be placed in the trunking basket. *Id.* at ¶ 132. As with the STP port termination

(4) Signal Switching – a new usage-sensitive, per-query charge, perhaps varying by peak and off-peak periods, to recover costs relating to STP processing and switching.[20]

The Commission's proposal provides for the explicit recovery of SS7 costs, many of which are currently recovered on an embedded basis as part of the TIC and local switching charges.

The Commission should move cautiously in restructuring SS7 charges to ensure rational rates that promote competition and do not undermine existing telecommunications services.

A. The Commission Should Adopt SS7 Charges Only If It Determines that the Benefits of Such Action Outweigh the Associated Costs.

The Financial Service Providers support rate structures that reflect the manner in which costs are incurred, and they recognize the need to reassess the method for recovering the costs of SS7 services. But that reassessment must be done cautiously and any action should be based on evidence, not speculation. The Financial Service Providers accordingly recommend that the Commission follow a course similar to that advocated above for call-setup: (1)

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rate element, however, because signal transport must be provided by the ILEC, while the signal link may be provided by other carriers, the two elements should be placed in separate service categories so that the less competitive element can not be used to subsidize the more competitive element.

[20] NPRM at ¶ 133. The Commission observed that the cost of signal switching appears more closely related to the number of SS7 queries than to the number or duration of calls. *Id.* Although the Financial Services Providers oppose the establishment of such a rate element, if the Commission nevertheless authorizes the element, the Committee agrees with the proposal to place the element in the traffic-sensitive basket. NPRM at ¶ 134. The Committee opposes the proposal to differentiate between peak and off-peak periods because of the difficulties the Commission has already recognized in administering and monitoring such a rate structure. *See supra* note 29 & accompanying text.

conduct a parallel, separate proceeding to make sure that new charges are justified and that the efficiency gains attributable to the reallocation of costs outweighs the negative impact of the reallocation; (2) phase-in any new usage based charges to avoid rate shock and inefficient by-pass of the public switched network; and (3) avoid "permanent" changes that are uprooted and reconstructed a year or two later.

First, the Commission should institute a parallel or separate proceeding to make sure that costs are accurately identified and correctly recovered. At a minimum, this means ensuring that there is no double counting, that the placement of rate charges in baskets is done in a fashion that mitigates against anti-competitive behavior, and that per-query or usage sensitive charges accurately place costs on the cost causer.

Second, the Commission must make sure that any new charges are not implemented in a manner that produces rate shock or *un*economic by-pass of the public switched network. The usage-sensitive signal transport charge and usage-sensitive signal switching element proposed by the Commission are a reversal of current practice, and may – particularly without a suitable phase-in period -- send very disruptive price signals.

If charges do not accurately reflect costs and do not efficiently and properly allocate those costs, customers (whether end users or interexchange carriers) will be encouraged to engage in inefficient by-pass of the public network, a result that no one wants. Moreover, telecom customers who place (or receive but pay for, as through 800/888 service) many short-duration calls would be particularly disrupted by the sudden adoption of per-call charges where none previously existed.[21] Even if rate changes are justified, they should therefore be phased-in.

Third, the Commission should not impose changes today based on embedded costs if it will revamp the charges tomorrow to require carriers to recover their costs on a different basis. This would create the same market confusion mentioned above, would be a waste of Commission, carrier, and end-user resources, and should be avoided.

[21] As it did with respect to call set-up local switching charges, the Financial Service Providers request that any per-call charges that may be adopted should be phased in gradually to avoid rate shock. *See supra,* pages 9-11.

CONCLUSION

The Commission's re-examination of access to create cost-based, economically efficient access charges is laudable. Changes can and should be made, but not without careful examination of underlying costs and the impact of substantially changing the way in which those costs are collected. Without a balanced, risk/benefit approach, changes will create market uncertainty and inefficiency rather than encouraging competition or improving the allocation of costs and benefits. Two areas in which improperly grounded decisions would create unintended, but harsh, results are flat-rated call-setup and usage-sensitive SS7 charges.

Respectfully submitted,

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Counsel for:
The Bankers Clearing House
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and VISA, U.S.A., Inc.

Dated: January 29, 1997

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CERTIFICATE OF SERVICE

I, Andrew Baer, hereby certify that true and correct copies of the Comments of The Bankers Clearinghouse, MasterCard International Incorporated and VISA, U.S.A., Inc. in CC Docket Nos. 96-262, 94-1, 91-213, and 96-263 were filed this 29th day of January 1997. An original and 16 copies have been filed with the Secretary of the FCC, two (2) copies have been hand delivered to the Competitive Pricing Division of the Common Carrier Bureau at Room 518, 1919 M Street, NW., and one (1) copy was delivered to International Transcription Service, Inc.

Andrew Baer

January 29, 1997

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